

GLEN J. McCROREY AND DELORIS McCROREY

IBLA 80-359

Decided April 8, 1980

Appeal from letter decision of the Oregon State Office, Bureau of Land Management, declining to record mining claim 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Glen J. McCrorey, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a letter-decision dated December 19, 1979, by the Oregon State Office, Bureau of Land Management (BLM), declining to accept for recordation appellants' filings, received October 15, 1979, with respect to the Cretie Star mining claim, (3833 (OR)), because appellants had failed to submit timely either a copy of an original notice of location, or, in absence thereof, secondary evidence of location to prove establishment of the claim. Consequently, BLM held

that the filings, which included the fee and an affidavit of assessment work, did not comply with the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744(b) (1976)) and the implementing regulation 43 CFR 3833.1-2(a). That regulation provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section shall be filed.

The memorandum transmitting the case file from the Oregon State Office to this Board states that the claim in issue was located in 1945, recorded in Coos County, Oregon, and declared null and void by decision dated January 11, 1974. Appellants acquired 1/ the claim by quitclaim deed dated July 19, 1974.

[1] Appellants, who stress the importance of the deed, misapprehend the mandatory requirements of the recording provisions. The failure to comply with those provisions must result in a finding that the claim has been abandoned. 2/ Walter T. Paul, 43 IBLA 119 (1979); Dale C. Delor, 40 IBLA 88 (1979); Roy W. Bryam, 39 IBLA 32 (1979); R. Wade Holder, 35 IBLA 169 (1978). Since appellants' claim was located prior to October 21, 1976, they were obliged to file a copy of the official record of the notice or certificate of location of the claim with BLM on or before October 22, 1979.

Appellants may, however, relocate their claim and make the filings required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming no intervening closure of the land to mineral location.

1/ In the circumstances, it does not appear that appellants obtained any rights by virtue of the quitclaim deed. Assuming, arguendo, that they did obtain some rights to the former mining claim under applicable Oregon law, those rights were vitiated by the letter-decision of December 19, 1979.

2/ 43 CFR 3833.4 provides:

"(a) The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void" (Emphasis supplied).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

